State Office of Administrative Hearings

Cathleen Parsley
Chief Administrative Law Judge

August 7 2008

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2008 AUG -7 PM 4:15
CHIEF CLERKS OFFICE

Les Trobman, General Counsel
Texas Commission on Environmental Quality
PO Box 13087
Austin Texas 78711-3087

Re: SOAH Docket No. 582-07-3998; TCEQ Docket No. 2007-0020-MWD; In Re: Application of the City of Aledo to Amend TPDES Permit No. WQ00110847001

Dear Mr. Trobman:

After the Proposal for Decision was issued in this case on June 12, 2008, the Executive Director and Applicant filed exceptions. Enclosed are copies of the Amended Proposal for Decision and Order that respond to the exceptions.

One change was made to the Proposal for Decision. On page 5, a statement regarding the potentially affected landowners has been clarified to indicate that, even though the wastewater discharge point will be relocated to accommodate the UV disinfection chamber, notice was already given to the pertinent landowners. Thus, it is not necessary to again mail notice of the application.

In the Amended Order, Finding of Fact No. 21 has been deleted because it was incorrect. Finding of Fact No. 16 has been amended slightly to more correctly reflect the requirement regarding buffer zones.

Sincerely,

Sarah G. Ramos
Administrative Law Judge

SGR/cm
Enclosures
cc: Mailing List

STATE OFFICE OF ADMINISTRATIVE HEARINGS

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AGENCY: **Environmental Quality, Texas Commission on (TCEQ)**

STYLE/CASE: **CITY OF ALEDO**

SOAH DOCKET NUMBER: **582-07-3998**

REFERRING AGENCY CASE: **2007-0020-MWD**

STATE OFFICE OF ADMINISTRATIVE HEARINGS	**ADMINISTRATIVE LAW JUDGE**
	ALJ SARAH G. RAMOS
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MARTIN O. SIEGMUND

xc: Docket Clerk, State Office of Administrative Hearings

TEXAS
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CHIEF CLERKS OFFICE

SOAH DOCKET NO. 582-07-3998
TCEQ DOCKET NO. 2007-0020-MWD

APPLICATION OF	§	**BEFORE THE STATE OFFICE**
	§	
THE CITY OF ALEDO FOR	§	**OF**
	§	
TPDES PERMIT NO. WQ0010847001	§	**ADMINISTRATIVE HEARINGS**

AMENDED PROPOSAL FOR DECISION

I. INTRODUCTION

The City of Aledo (Applicant or City) has applied to the Texas Commission on Environmental Quality (TCEQ or Commission) for a major amendment to its Texas Pollutant Discharge Elimination System (TPDES) Permit No. 10847-001.[1] The city seeks to increase the discharge of treated domestic wastewater from a daily average flow not to exceed 350,000 gallons per day (GPD) to a daily average flow not to exceed 600,000 GPD with an average discharge during any two-hour period not to exceed 1,250 gallons per minute. The proposed amendment would also change the disinfection technique from chlorination to an ultraviolet (UV) light system. The Administrative Law Judge (ALJ) recommends that the application be granted and that the Commission issue the Draft Permit prepared by the Executive Director (ED) with one modification regarding phosphorus limits.

II. NOTICE, JURISDICITON, AND PROCEDURAL HISTORY

A. Issues Referred

Notice and jurisdiction were not contested and are outlined only in the Proposed Order. Martin Siegmund, whose property adjoins the permitted site and is within the site's 150-foot buffer area, protested the application. By Order dated August 13, 2007, the Commission referred the application to the State Office of Administrative Hearings (SOAH) for a hearing to consider whether:

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[1] The new permit would replace TNRCC Permit No. 10847-001 issued November 19, 1998, and NPDES Permit No. TX0027120, issued January 9, 1995. App. Ex. 5-1 at Exhibit 4.

(1) the proposed permit amendment complied with the 30 TEX. ADMIN. CODE (TAC) §309.13 buffer zone and odor control requirements;
(2) specific special conditions were necessary to address potential chlorine leaks; and
(3) the proposed amendment comported with the TCEQ's policy of regionalization.

B. Parties

At the preliminary hearing on December 12, 2007, the following parties were designated:

Applicant, represented by Douglas W. Black and E. Allen Taylor, Jr.;
The ED, represented by Michael Northcutt, Jr., and Marc Friberg, Staff Attorneys;
The Office of Public Interest Counsel (OPIC), represented by Garrett T. Arthur;
Tarrant Regional Water District (TRWD), represented by Mark R. Ernst at the preliminary hearing but generally represented by Fred B. Werkenthin, Jr., in this docket; and
Martin O. Siegmund, *pro se*.

C. Hearing on the Merits and Initial Proposal for Decision (PFD)

The evidentiary hearing was conducted on April 16-17, 2008, at 677 Camp Bowie Blvd., Suite 400, Fort Worth, Texas. The record closed at the conclusion of the hearing. The Applicant, the ED, and Mr. Siegmund presented evidence, and OPIC participated through cross-examination of witnesses called by other parties.

The PFD was issued on June 12, 2008. This Amended PFD is submitted in response to the ED's Exceptions filed July 2, 2008. The Applicant adopted the ED's exceptions and filed no other exceptions. Mr. Siegmund did not file exceptions or replies to exceptions.

D. TRWD Settlement

Shorting before the preliminary hearing, the City and TRWD entered into a settlement by which the City agreed to meet TRWD's phosphorus limits by the final completion of the plant,

and TRWD agreed not to oppose the application if this limitation is met.[2] The ALJ subsequently granted TRWD's request to withdraw as a party.

At the hearing, the engineer who prepared the application, Gary Burton, said he would modify the proposed design to limit phosphorous to 1.0 mg/l.[3] Mechanisms will be installed to introduce chemical agents, and those agents will precipitate and, thereby, remove phosphorous.[4] The ALJ recommends that the Draft Permit be amended to include this phosphorous limitation.

E. Witnesses

The City presented the testimony of five witnesses. Mayor Kit Marshall; City Secretary Kathleen Wedell; Gordon Smith, the City's Director of Public Works; Chris Morales, the City's Utilities Field Supervisor; and Gary Burton. The City engaged Mr. Burton to prepare the application. He holds a Texas P.E. license, a B.S. in civil engineering, an M.S. in environmental engineering, and has 29 years experience in municipal engineering work.[5] As the City's Utilities Field Supervisor, Mr. Morales oversees the plant operators and ensures compliance with applicable law. He holds a Class C Wastewater License from TCEQ.[6]

Protestant Siegmund testified in his own behalf and also presented written direct testimony prepared by his son, Mark Siegmund.

The ED's witness, Michael A. Redda, an environmental permits specialist with the TCEQ, reviewed the application. Mr. Redda has reviewed approximately 230 wastewater permit applications. He holds a B.S. in plant science, a M.S. in environmental sciences, and is a Ph.D. candidate in environmental science and engineering at the University of Texas at Arlington.[7]

III. BACKGROUND

[2] App. Ex. 2 at 7 (Marshall); App. Ex. 5-7.
[3] Milligrams per liter.
[4] App. Ex. 1 at 4.
[5] App. Ex. 1 at 1.
[6] App. Ex. 3 at 1-2.
[7] ED Ex. 3 at 1-3.

The City of Aledo is a Type A general law municipality in Parker County, Texas. The current population is between 2,500 and 2,600. The population is projected to increase to 4,110 by 2010 and 6,697 by 2017. The existing facility already has exceeded its capacity during wet weather flows.[8]

According to Aledo's mayor, Kit Marshall, about 838 wastewater connections currently are tied into the facility. Based on the City's projected growth, the facility will soon exceed its currently permitted and designated capacity. Already, subdivisions are platted within the city, and the plats reflect plans to build 84 homes. If the permit is not granted and until a regional plant becomes operational, city growth would come to a standstill.[9]

The City has managed the facility since 2004; prior to that time, Severn Trent operated it.[10] The facility is located approximately 0.5 miles west of the intersection of FM 5 and FM 2376 within the City's limits and Parker County, Texas.

The application includes design calculations,[11] a ten-year summary of wind direction and velocity from Meacham Field in Fort Worth,[12] a sludge solids management plan,[13] and various maps, including a U.S.G.S map, a landowners' map, and buffer zone maps.[14]

A. Discharge

At present, treated effluent is discharged to an unnamed tributary of Clear Fork Trinity River, then to Clear Fork Trinity River below Lake Weatherford in Segment No. 0831 of the Trinity River Basin. For the unnamed tributary of Clear Fork Trinity River, the receiving water uses are not significant aquatic life uses, but in Segment No. 0831, designated uses are high

[8] App. 5-1 at Exhibit 13.
[9] App. Ex. 2 at 2 and 5.
[10] App. Ex. 4 (Smith).
[11] App. Ex. 5-1 at Exhibit 14.
[12] App. Ex. 5-1, Exhibit 15.
[13] App. Ex. 5-1 at Exhibit 16.
[14] App. Ex. 5-1, Exhibit 1.

aquatic life uses, public water supply, and contact recreation. The ED determined that effluent limitations in the Draft Permit will maintain and protect the existing instream uses.

Even though the application indicated that there would be no change in the discharge location, Mr. Burton had determined by the time of the hearing that it may be necessary to relocate the discharge location by about 100 feet to accommodate the UV disinfection chamber.[15] Even so, moving the discharge location by this distance would not require notice to other landowners because the landowners located one mile downstream of the new discharge point would be the same as those who were previously notified.[16]

B. Facility Description

The present facility operates in the extended-aeration mode. It is an above-ground steel tank, activated sludge-type plant with an influent pump station, two aeration basins, three final clarifiers, two chlorine contact chambers, an aerobic digester, and a sludge de-watering building.[17] According to Mr. Morales, the plant has an average flow of about 275,000 to 280,000 GPD. He estimated that 100 new connections have been added in the last year.[18]

In the final phase, the facility will be an activated-sludge process plant operated in the complete-mix mode. Treatment units will include bar screens, four aeration basins, four final clarifiers, sludge digesters, sludge drying beds, a belt filter press, and a UV disinfection system. The final phase effluent limitations, based on a 30-day average, will be 10.0 mg/l $CBOD_5$, 15.0 mg/l TSS, 3.0 mg/l NH_3-N, 200 colonies per 100 ml fecal coliform, and 4.0 mg/l minimum dissolved oxygen.[19]

C. Draft Permit

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[15] App. Ex. 3 at 2 (Morales); Tr. 25 (Burton).
[16] Landowners Map, App. Ex. 5-1 at Exhibits 4 and 5; Tr. 72-73.
[17] App. Ex. 1 at 2 (Burton); App. Ex. 3 at 2 (Morales).
[18] Tr. 154.
[19] App. Ex. 5-1 at 6 and Exhibit 14; App. Ex. 3 at 3; App. Ex. 1 at 2 (Burton); App. Ex. 3 at 2 (Morales).

In Mr. Redda's opinion, the Draft Permit compiles with TEX. WATER CODE ANN. Ch. 26 and applicable TCEQ rules. Mr. Redda also said the Draft Permit:

- Sets effluent limitations and/or conditions that will comply with the Texas Surface Water Quality Standards, 30 TEX. ADMIN. CODE (TAC) §§ 307.1 – 307.10;
- Includes the effluent limitations that meet the requirements for secondary treatment and the requirements for disinfection according to 30 TAC Ch. 309, Subch. A, Domestic Wastewater Effluent Limitations.
- Was reviewed by the TCEQ's Water Quality Assessment Section and Storm Water & Pretreatment Team of TCEQ's Water Quality Division;
- Is consistent with the Coastal Management Plan (the facility is not located in a Coastal Management Program boundary);
- Will comply with the Texas Clean Water Act, §202(d); approved by TCEQ on May 13, 2005, and approved by the U.S. Environmental Protection Agency on May 8, 2006; and
- Will comply with the TNRCC Guidance Document for Establishing Monitoring Frequencies for Domestic and Industrial Wastewater Discharge Permits, Document No. 98-001.000.OWR-WQ, May 1998.[20]

Under the exiting permit, sludge generated from the facility is hauled by a registered transporter and disposed of at a TCEQ authorized land application site, West Side Landfill, Permit No. 1019-A, in Parker County. The Draft Permit similarly authorizes the disposal of sludge at a TCEQ-registered or permitted land application site, commercial land application site, or co-disposal landfill.

IV. BUFFER ZONE AND ODOR CONTROL REQUIREMENTS

A. Applicable Law and the City's Plan to Comply

A wastewater plant may not be located closer than 150 feet to the nearest property line. The permittee must hold legal title or have other sufficient property interest to a contiguous tract of land necessary to meet the distance requirements.[21] In this case, the City does not own sufficient property to comply with the requirement. If an applicant cannot meet the 150-feet

[20] App. Ex. 5-3 at 4.
[21] 30 TAC §309.13(e)(1).

distance requirement, it may submit a nuisance odor prevention request. The request must address existing climatological conditions, such as wind velocity and atmospheric stability, surrounding land uses which exist and are anticipated in the future, wastewater characteristics in the affected units pertaining to the buffer-zone area, potential odor generating units, and proposed solutions to prevent nuisance conditions at the edge of the buffer zone and beyond. Proposed solutions must be supported by actual test data or appropriate calculations.[22] If the facility will not meet one of these buffer-zone requirements, the applicant must request a variance. Variance requests are considered on a case-by-case basis and, if granted by the Commission, must be included as a condition in the permit.[23]

The ED's witness, Mr. Redda, summarized these rules by stating that they provide three options to meet these requirements. An applicant can own the buffer zone area, secure a restrictive easement from the adjacent property owners, or provide odor control.[24] The City proposes to comply with the buffer zone requirements first by odor abatement and second by variance.[25]

B. Area Around Facility

Mr. Burton testified that the nearest residence to the facility is about 1,000 to 1,200 feet away.[26] Homes are "more or less" immediately to the south of the plant.[27] Mr. Smith said four homes are within 1,200 feet from the plant, and they are on a bluff.[28] A pasture with a stock pond and a pecan grove are to the north of the facility, dense woods along a creek are to the west, a 30-foot cliff and thick brush are to the south, and the plant's access road is to the east. According to Mayor Marshall, the facility's security fence is to the north approximately 12 feet

[22] 30 TAC §309.13(e)(2)
[23] 30 TAC §309.13(f).
[24] ED Ex. 3 at 9-10 (Redda), citing 30 TAC § 309.13(e).
[25] Tr. 222 (Redda).
[26] App. Ex. 1 at 4; *see also* Landowners Map, App. Ex. 5-1 at Exhibits 4 and 5; App. Ex. 5-3 at unnumbered page 25 (Buffer Zone Map).
[27] Tr. 82 (Burton).
[28] Tr. 135 (Smith).

from the Siegmund property line. The nearest treatment unit is 15-20 feet inside the security fence.[29]

C. Protestant's Evidence

Martin Siegmund testified that the plant sits on less than one acre of land. His property is adjacent to and north of the City's property, and the property line is approximately 16 feet from the nearest plant unit. The furthest plant unit is approximately 35 feet from his property line.[30] Mr. Siegmund described the 90 acres he owns as a prime site for residential development with pecan trees, native grasses, and a small fishing tank near the plant. He said the nearest house is about 94 feet from the plant.[31]

On approximately 50 occasions, Mr. Siegmund has observed raw sewage from the plant flow onto his property; the most recent discharge of this nature was in December 2007. He said the area generally smells bad, and no one wants to pick up pecans or fish in the tank.[32]

Mr. Siegmund also has seen solid waste lying in two uncovered dumpsters that are about six feet wide by 20-feet long for days or weeks at a time until it is hauled away. While the waste is there, moisture from the solids and any captured precipitation drains onto the ground and creates a tremendous odor. When the wind is from the south, the odor can be detected all across Mr. Siegmund's property and even on his son's (Mark Siegmund's) front porch, which is about 1,800 feet from the plant. Mark Siegmund's property is north and adjacent to his father's land.[33]

In Mr. Siegmund's opinion, the planned increase in capacity at the City's facility will likely cause some of his property to become unusable. Since the present conditions are so bad, it is unreasonable to conclude that almost doubling the facility's capacity will improve the

[29] App. Ex. 2 at 4-5 (Marshall).
[30] Pr. Ex. 2 at 1.
[31] Pr. Ex. 1 at 2.
[32] Pr. Ex. 2 at 2.
[33] Pr. Ex. 2 at 2-3.

situation, he testified. The facility's site area is too small, and it is too near existing and future residential development.[34]

Similarly, Mark Siegmund testified that the plant sits on less than one acre of land and is about 16 feet from his father's property line. He said the odors and effluent spills had reduced their ability to enjoy the property.[35]

D. Overflows and Sludge Spills

Mr. Smith described the two sludge containers as being four-and-a-half feet deep, six-feet wide and 20-feet long. The incident in which the sludge piles leaked occurred when the truck that was to pick up the sludge dumped it on the ground.[36] Mr. Smith also said that after he was employed by the City in April 2007, he made arrangements to have the sludge boxes covered.[37]

As the City's Public Works Director, Mr. Smith listed more recent wastewater overflows at the plant site, as follows:

> Dec. 14, 2007 –sewage spill due to blockage in the splitter box;
> May 4, 2007 – spill due to increased flow as a result of storm water infiltration;
> March 30, 2007 – lift station overflow because of a pump's electrical failure;
> Oct. 16, 2006 – spill due to clogged line; and
> July 18, 2006 – allegation of failure to meet permit limitations.[38]

Within a month and a half prior to the hearing, there were other overflows in manholes, but not at the facility site.[39] Mr. Smith said the City has entered a Sanitary Sewer Overflow Agreement with the TCEQ, and it addresses how the City will improve the overflow problems.[40]

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[34] Pr. Ex. 2 at 3.
[35] Pr. Ex. 3 at 1-3.
[36] Tr. 120 (Smith).
[37] Tr. 122, 129.
[38] App. Ex. 4 at 2.
[39] Tr. 104-106 (Smith).
[40] Tr. 108 (Smith).

When there is an overflow, the City performs clean-up and correction under TCEQ's guidelines.[41]

During one overflow in Mr. Smith's tenure, wastewater ran onto Mr. Seigmund's property and was about a foot and a half deep in one area.[42] The City retrieved the waste by pumping it back into the sewer system and treated the area with chlorine.[43] Mr. Smith agreed that chlorine has an odor and is a hazard.[44] But Mr. Burton testified that the improvements proposed in the application will reduce the possibility for plant overflows, even as they will allow increased volume.[45]

E. City's Efforts to Control Odor

Mr. Morales said a complaint about odor was made in April 2007 when the sludge hauler had to relocate to a new TCEQ-permitted landfill. After the City received the complaint, the hauler adjusted its scheduled removal of sludge boxes to more regularly scheduled pick ups.[46]

The application proposes to have sludge removed every 24 days at 100% flow, 33 days at 75% flow, 50 days at 50% flow, and 99 days at 25% flow. Sludge will be removed from the digester when the digester is full of thickened solids. The sludge will be pumped to the belt press, dewatered, and then hauled by a registered transporter to a landfill for disposal.[47]

The existing plant has no odor control system, only a deodorizer at the influent lift station; but the new plant will have an odor control system.[48] Until the permit is approved, Mr.

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[41] Based on the City's Compliance History for the years 2001-2006, the City had major violations on July 13, 2002, when it failed to properly document pH and D.O. meter calibration events, and had nine moderate violations for failing to meet the limits for one or more permit parameters. ED Ex. A.
[42] Tr. 110 (Smith).
[43] Tr. 111 and 114 (Smith).
[44] Tr. 140.
[45] App. Ex. 1 at 4.
[46] App. Ex. 3 at 3 (Morales).
[47] App. Ex. 5-1 at Exhibit 16, page 1.
[48] App. Ex. 1 at 15 (Burton); App. Ex. 3 at 2 (Morales).

Burton does not know what specific technical elements will be required;[49] the final design will not be submitted to TCEQ until the permit is approved.[50] But he said the odor improvements will include the best available technology.[51] In essence, the City intends to enclose the odor-producing parts of the plant, use a ventilation system to remove the air from those portions of the plant, and route the air through some odor-removal device.[52]

F. Draft Permit's Requirements

The Draft Permit prohibits any unauthorized discharge.[53] It also requires the City to ensure the facility and all of its systems are properly operated and maintained;[54] initiate engineering and financial planning for expansion and/or upgrading of the facility if the flow measurement reaches 75% of the permitted daily average flow for three consecutive months;[55] keep management records for all sludge removed, in accordance with 30 TAC Ch. 335;[56] handle sludge disposal in compliance with 30 TAC Ch. 312;[57] and employ or contract with one or more licensed wastewater treatment facility operators or companies.[58]

Before construction of the final phase, the City must submit sufficient evidence of legal restrictions prohibiting residential structures within the part of the buffer zone that the City does not own, in accordance with 30 TAC §309.13(e)(3). Also, the City must provide a nuisance odor prevention request for approval in a sealed engineering report, as required by 30 TAC §309.13(e)(2).[59]

G. ALJ's Analysis

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[49] Tr. 85.
[50] Tr. 71.
[51] App. Ex. 1 at 3; Tr. 73.
[52] Tr. 70.
[53] ED Ex. 2 at 7.
[54] ED Ex. 2 at 9.
[55] ED Ex. 2 at 10
[56] ED Ex. 2 at 11.
[57] ED Ex. 2 at 12.
[58] ED Ex. 2 at 23.
[59] ED Ex. 2 at 23, No. 4.

As the Seigmunds' testimony indicates, the facility has created a most difficult situation for surrounding landowners. By Martin Siegmund's count, there have been 50 overflows onto his property during the facility's history; the City presented evidence of several overflows in 2006 and 2007 and recent overflows in manholes. Also, sludge boxes were uncovered prior to April 2007, and there has been at least one recent sludge spill.

However, even though the City has not secured a 150-buffer, the ALJ finds that the permit amendment application should be granted. The application does not describe the specific methods that the City will use to prevent odors, but Mr. Burton's testimony sheds some light on the City's plan. The amendments include an odor control system for the facility, which now has only a deodorizer and no odor controls. The odor-producing parts of the plant will be enclosed, and a ventilation system will remove the air from the odor-producing portions and route the air through an odor-removal device. These improvements appear to be greatly needed, and odor control is one of the listed means of compliance when a 150-foot buffer is not available to an operator. Also, the City's compliance with the Overflow Agreement should add more protections.

The proposed sludge removal times in the application appear to be quite long – 99 days when there is 25% flow. However, if sludge boxes are properly closed, as Mr. Smith testified they currently are, the odor from them should not drift.

The City argues that the proposed improvements will reduce the possibility for plant overflows, even as they will allow increased volume. But Mr. Siegmund asserted that because the present conditions are so bad, it is unreasonable to conclude that almost doubling the facility's capacity will improve the situation. Had the City not presented evidence regarding planned improvements, the ALJ would agree with Mr. Siegmund's reasoning. When an operator does not have sufficient ownership in the buffer area to protect surrounding landowners from what the Siegmunds have experienced, it stands to reason that increasing the wastewater capacity will not improve the situation for the landowners. The surrounding land already has homes on it, and more development can be anticipated. Yet, this evidence also shows the improvements are truly needed, and with the planned expansion, those changes will be implemented. To bring a

facility up-to-date with the most current technology should alleviate many of the problems the Siegmunds have experienced. Accordingly, the ALJ finds the amendment as outlined in the Draft Permit will comply with the 30 TAC §309.13 buffer zone and odor control requirements.

V. POTENTIAL CHLORINE LEAKS

The Commission asked whether special conditions are needed to address chlorine leaks. The City uses chlorination for disinfection and that method of disinfection will be used until the final phase of the Draft Permit.[60] Mr. Smith said that at the exiting plant, a phone call is placed to the operator when there is a chlorine leak.[61]

At final completion, the facility would be required to change to a UV disinfectant system.[62] Mr. Redda testified that conversion to the UV system can be accomplished any time the City has obtained approval of its plans and is ready to divert the flow to the UV chamber. He added that some facilities use break-point chlorination to reduce the level of ammonia nitrogen in the wastewater, but the application does not indicate any present or intended use of break-point chlorination.[63]

Based on this evidence, no special conditions are necessary to address chlorine leaks. Conversion from chlorine to UV disinfection should make the plant's operation safer.

VI. REGIONALIZATION

As required by TEX. WATER CODE ANN. §26.081 through 26.087, regional or area-wide municipal wastewater systems are preferred over smaller treatment plants. All municipal wastewater dischargers should connect their sewer lines to a wastewater treatment facility or collection system that is located within three miles, if the regional system has the capacity to accept the volume of wastewater proposed and the planned activity will not be economically

[60] ED Ex. 3 at 10 (Redda).
[61] Tr. 142 (Smith).
[62] ED Ex. 3 at 10; App. Ex. 2 at 6 (Marshall).
[63] ED Ex. 3 at 10 (Redda).

disadvantageous.[64] But there are no regional or area-wide systems within three miles of the facility to which the City can connect its sewer lines.[65]

The City participated in a regional study completed last year for the East Parker County-West Tarrant County region that included Weatherford, Fort Worth, and the cities between them, including Aledo.[66] Also, the City has entered an interlocal agreement with Fort Worth to evaluate and study a site for a regional plant.[67] According to Mayor Marshall, the City Council is committed to using a regional facility when one becomes available if it is economically and physically feasible.[68] However, according to the application, a regional facility will not be built for approximately seven to ten years.[69]

According to Mayor Marshall, the wastewater treatment plant nearest to the City is Deer Creek in the City of Anneta, which is due west of Aledo. The Deer Creek facility is less than five miles from Aledo, but it does not have the capacity to handle Aledo's wastewater.[70] Similarly, the ED's witness, Mr. Redda, determined that two other facilities are within three miles of the facility, but neither is large enough to accept any flow from the City.[71]

The ALJ finds that the proposed permit amendment will comply with TCEQ's policy of regionalization. While the City is committed to participating in a regional system, no regional or area-wide systems are available for the City's use at this time. If the City and Fort Worth are able to locate a site for a regional plant and agree to develop a wastewater project, that would be a preferable solution for the City's wastewater needs. But that possibility will not be available to the City for some years. Thus, the Commission should approve the Draft Permit for the amendment to the existing, local plant.

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[64] ED Ex. 3 at 9 (Redda).
[65] ED Ex. 3 at 9-10.
[66] App. Ex. 5-8
[67] Tr. 167-168 and 173 (Marshall); App. Ex. 6.
[68] Tr. 185; App. Ex. 2 at 6 (Marshall); App. Ex. 6.
[69] App. Ex. 5-1 at Exhibit 13.
[70] Tr. 211-213.
[71] Tr. 228-229 (Redda).

VII. TRANSCRIPT COSTS

The City arranged for a court reporter to be present at the hearing and for the hearing to be transcribed, but the City did not request apportionment of transcription costs to Mr. Siegmund. Therefore, the ALJ had not considered whether a portion of the costs should be assessed to him.

VIII. CONCLUSION

The ALJ recommends that the Commission adopt the attached Order, including the Findings of Fact and Conclusions of Law. The application for Permit No. WQ0010847001 should be approved and the Draft Permit be issued with the one recommended revision as set out in Conclusions of Law No.11. A copy of the Draft Permit admitted during the hearing is attached.

SIGNED August 7, 2008.

Sarah G. Ramos

SARAH G. RAMOS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AN ORDER granting the Application of the City of Aledo for TPDES Permit No. WQ0010847001;
TCEQ Docket No. 2007-0020-MWD
SOAH Docket No. 582-07-3998

On _____, the Texas Commission on Environmental Quality (Commission or TCEQ) considered the application of the City of Aledo (Applicant or City) for TPDES Permit No. WQ0010847001. The application was presented to the Commission with a proposal for decision by Sarah G. Ramos, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH).

After considering the ALJ's proposal for decision and the evidence and arguments presented, the Commission makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

A. Introduction

1. The City filed its application with the Commission on April 28, 2006, and provided additional information on May 23, 2006.

2. The City seeks approval of a major amendment to its Texas Pollutant Discharge Elimination System (TPDES) Permit No. 10847-001 for its wastewater facility located in Parker County, Texas.

3. If the application is approved, the final phase effluent limitations, based on a 30-day average, will be 10.0 mg/l $CBOD_5$, 15.0 mg/l TSS, 3.0 mg/l NH_3-N, 200 colonies per 100 ml fecal coliform, and 4.0 mg/l minimum dissolved oxygen.

4. The Executive Director (ED) deemed the application was admistratively complete on June 5, 2006, and subsequently prepared a Draft Permit.

5. On June 30, 2006, the Notice of Receipt of Application and Intent to Obtain Water Quality Permit Amendment was published in the *Community News*, a newspaper of general circulation in Parker County, Texas.

6. On September 29, 2006, Notice of the Application and Preliminary Decision for TPDES Permit for Municipal Wastewater Amendment, Permit No. WQ0010847001, was published in the *Community News*.

7. By Order dated August 13, 2007, the Commission referred the application to SOAH for a hearing to consider whether:

   (1) the proposed permit amendment complied with the 30 TEX. ADMIN. CODE (TAC) §309.13 buffer zone and odor control requirements;
   (2) specific special conditions were necessary to address potential chlorine leaks; and
   (3) the proposed amendment comported with the TCEQ's policy of regionalization.

8. On October 11, 2007, the Chief Clerk mailed notice of the preliminary hearing to City officials, Parker County officials, landowners adjacent to the facility, and other persons who had requested notice.

9. On November 9, 2007, notice of the preliminary hearing was published in the *Community News.*

10. The notices of preliminary hearing included a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.

11. At the preliminary hearing on December 12, 2007, the following parties were designated:

    Applicant, represented by Douglas W. Black and E. Allen Taylor, Jr.;
    The ED, represented by Michael Northcutt, Jr., and Marc Friberg, Staff Attorneys;
    The Office of Public Interest Counsel (OPIC), represented by Garrett T. Arthur;
    Tarrant Regional Water District (TRWD), represented Fred B. Werkenthin, Jr.; and
    Martin O. Siegmund, *pro se*.

12. Based on a settlement agreement with the City, TRWD requested and was allowed to withdraw as a party.

13. Based on its settlement with TRWD, the City agreed to modify its proposed design to limit phosphorous to 1.0 mg/l.

14. The evidentiary hearing was conducted on April 16-17, 2008, at 677 Camp Bowie Blvd., Suite 400, Fort Worth, Texas. The record closed at the conclusion of the hearing. The Applicant, the ED, and Mr. Siegmund presented evidence, and OPIC participated through cross-examination of witnesses called by other parties.

B. Buffer Zone and Odor Control Requirements

15. As specified in 30 TAC §309.13(e)(1), a wastewater treatment plant may not be located closer than 150 feet to the nearest property line, but the City does not hold legal title or have other sufficient property interest necessary to meet the distance requirements.

16. If the facility will not meet the 150-feet distance requirement, it may submit a nuisance odor prevention request or request a variance. 30 TAC §309.13(e)(2) and (f).

17. Variance requests are considered on a case-by-case basis, and if granted by the Commission, must be included as a condition in the permit. 30 TAC §309.13(f).

18. The City proposes to comply with the buffer zone requirements first by odor abatement and second by variance.

19. The Draft Permit requires that, before construction of the final phase, the City must submit sufficient evidence of legal restrictions prohibiting residential structures within the part of the buffer zone that the City does not own, in accordance with 30 TAC §309.13(e)(3).

20. The facility sits on less than one acre of land.

21. A pasture with a stock pond and a pecan grove are to the north of the facility, dense woods along a creek are to the west, a 30-foot cliff and thick brush are to the south, and the plant's access road is to the east.

22. Martin Siegmund's property is adjacent to and north of the City's property; the property line is approximately 16 feet from the nearest plant unit, and the furthest plant unit is approximately 35 feet from his property line.

23. Mr. Siegmund's property is a 90-acre tract that is a prime site for residential development; it has pecan trees, native grasses, and a small fishing tank near the facility.

24. On approximately 50 occasions, raw sewage from the plant has flowed onto Mr. Siegmund's property; the most recent discharge of this nature was in December 2007.

25. Sludge was spilled on the facility site when the truck that was to pick up the sludge dumped it on the ground.

26. Solid waste sludge has been left uncovered in large sludge boxes on the facility site for long periods of time, but presently is being covered.

27. The facility has had recent overflows, including:

Dec. 14, 2007 –sewage spill due to blockage in the splitter box;
May 4, 2007 – spill due to increased flow as a result of storm water infiltration;
March 30, 2007 – lift station overflow because of a pump's electrical failure;
Oct. 16, 2006 – spill due to clogged line; and
July 18, 2006 – allegation of failure to meet permit limitations.

28. Within a month and a half prior to the hearing, there were other overflows in manholes but not at the facility site.

29. When there is an overflow, the City performs clean-up and correction under TCEQ's guidelines.

30. During one fairly recent overflow, wastewater ran onto Mr. Seigmund's property and was about a foot and a half deep in one area.

31. The City retrieved the waste by pumping it back into the sewer system and then treated the area with chlorine.

32. The City has entered a Sanitary Sewer Overflow Agreement with the TCEQ, and it addresses how the City will improve the overflow problems.

33. When the wind is from the south, the facility's odor can be detected all across Mr. Siegmund's property and even on his son's (Mark Siegmund's) front porch, which is about 1,800 feet from the plant.

34. The City received a complaint about odor in April 2007 when the sludge hauler had to relocate to a new TCEQ-permitted landfill.

35. After the City received the complaint, the hauler adjusted its scheduled removal of sludge boxes to more regularly scheduled pick ups.

36. The application proposes to have sludge removed every 24 days at 100% flow, 33 days at 75% flow, 50 days at 50% flow, and 99 days at 25% flow.

37. Sludge will be removed from the digester when the digester is full of thickened solids.

38. The sludge will be pumped to the belt press, dewatered, and then hauled by a registered transporter to a landfill for disposal.

39. The existing plant has no odor control system, only a deodorizer at the influent lift station, but the new plant will have an odor control system.

40. If the permit is approved, the City will submit a final design with details regarding odor improvements.

41. The improvements will include the best available technology and will provide for enclosing the odor-producing parts of the plant, using a ventilation system to remove the air from those portions of the plant, and routing the air through some odor-removal device.

42. The Draft Permit prohibits any unauthorized discharge; it also requires the City to ensure the facility and all of its systems are properly operated and maintained; initiate engineering and financial planning for expansion and/or upgrading of the facility if the flow measurement reaches 75% of the permitted daily average flow for three consecutive months; keep management records for all sludge removed, in accordance with 30 TAC Ch. 335; handle sludge disposal in compliance with 30 TAC Ch. 312; and employ or contract with one or more licensed wastewater treatment facility operators or companies.

43. The Draft Permit requires the City to provide a nuisance odor prevention request for approval in a sealed engineering report, as required by 30 TAC §309.13(e)(2).

44. The proposed amendment will bring the facility up-to-date with the most current technology.

45. The amendment should improve the situation for surrounding landowners, even as it allows for increased volume.

C. Potential Chlorine Leaks

46. The facility currently uses chlorination for disinfection.

47. Upon final completion, the facility will use an ultraviolet disinfectant system instead of chlorine disinfection.

48. In the application, the City did not indicate an intent to use break-point chlorination to reduce the level of ammonia nitrogen in the wastewater.

D. Regionalization

49. Regional or area-wide municipal wastewater systems are preferred over smaller treatment plants. TEX. WATER CODE ANN. §26.081 through 26.087.

50. All municipal wastewater dischargers should connect their sewer lines to a wastewater treatment facility or collection system that is located within three miles, if the regional system has the capacity to accept the volume of wastewater proposed and the planned activity will not be economically disadvantageous.

51. Two wastewater systems are within three miles of the City's facility, but they are too small to add the City's wastewater volume to their systems.

52. There are no regional or area-wide systems within three miles of the facility to which the City can connect its sewer lines.

53. The City has entered an interlocal agreement with Fort Worth to evaluate and study a site for a regional plant, but a regional facility will not be built for approximately seven to ten years.

II. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over water quality to issue a TPDES permit under TEX. WATER CODE ANN.§§ 5.013, 26.003, 26.011.

2. SOAH has jurisdiction over all matters relating to the conduct of a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law under TEX. GOV'T CODE ANN. §§ 2001.058 and 2003.047.

3. The proceedings were conducted in accordance with applicable law and regulations, specifically TEX. WATER CODE ANN Chs. 5 and 26, TEX. GOV'T CODE ANN. Ch. 2001 and § 2003.047, the Commission's rules, and SOAH's procedural rules.

4. The City and TCEQ satisfied all public notice requirements set forth in TEX. GOV'T CODE ANN.§ 2001.051 and § 2001.052, TEX. WATER CODE ANN. §§ 5.552, 5.553, 5.555, 26.022 and 26.028 and 30 TAC §§ 39.551, *et seq.*

5. The City's TPDES permit application was filed and processed (including issuance of a preliminary decision, the review and response to public comment, and the preparation of the final draft permit) in accordance with TEX. WATER CODE ANN. §§ 5.553 and applicable Commission rules and policies.

6. The permit amendment as limited by the conditions in the Draft Permit will comply with the 30 TAC §309.13 buffer zone and odor control requirements.

7. No special conditions are necessary to address chlorine leaks.

8. The proposed permit amendment will comply with TCEQ's policy of regionalization.

9. So that the City will be in compliance with its settlement agreement with TRWD, the Draft Permit should be amended to limit phosphorous discharge levels to 1.0 mg/l.

10. The City's TPDES permit application, as described in the Draft Permit, will meet the requirements for Commission approval as set out in the Texas Water Code, the Texas Government Code, and the relevant requirements of the Commission's implementing regulations.

11. The City's application should be granted, and TPDES Permit No. WQ0010847001 should be issued with the following modification to the Draft Permit:

    Phosphorous discharge levels are limited to 1.0 mg/l.

NOW, THEREFORE, IT IS ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENT QUALITY THAT:

1. The application of the City of Aledo for TPDES Permit No. WQ0010847001is approved and the Draft Permit is issued with the revision set out in this Order.

2. The City shall comply with all Findings of Fact and Conclusions of Law contained herein.

3. The City shall pay all transcription and reporting costs.

4. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.

5. The effective date of this Order is the date the Order is final, as provided by 30 TAC § 80.273 and TEX. GOV'T CODE ANN. § 2001.144.

6. The Commission's Chief Clerk shall forward a copy of this Order to all parties.

7. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

ISSUED:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

H.S. "Buddy" Garcia, Chairman
For the Commission